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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,404	02/12/2002	Rudolf Gartner	22750/525	7026

26646 7590 12/06/2004

KENYON & KENYON  
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NEW YORK, NY 10004

EXAMINER
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JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/074,404

Applicant(s)

GARTNER ET AL.

Examiner

Cheryl Juska

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 11-33

Claim(s) withdrawn from consideration: 1-10

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

Cheryl Juska  
Primary Examiner  
Art Unit: 1771

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments have been found unpersuasive. Specifically, regarding the first 112, 2nd rejection, the examiner reasserts the structural relationship of the two fiber types within the nonwoven and with respect to the methods of entanglement is indefinite. Without said structural relationship, the scope of the claim is unclear and a proper search of the prior art cannot be made. With respect to the second 112, 2nd rejection, the examiner disagrees with applicant's assertion that page 6 of the specification teaches a conversion from Nm<sup>2</sup>/g to N/5cm. It is still unclear what is meant by a modulus value of X N/5cm, but "at least" (X/100) Nm<sup>2</sup>/g. The units of the values are still unclear and what is meant by "at least..." is unclear.

Regarding the 112, 1st enablement rejection, applicant merely traverses on the grounds that the examiner has not presented a properly supported rejection. The examiner respectfully disagrees. It is maintained that undue experimentation would be required to make and use the invention as presently claimed, particularly since the scope of the claim is unclear. Additionally, with respect to the 112, 1st new matter rejection, applicant's arguments are also found unpersuasive in that the limitation "at least one of" is descriptive of the methods (a) bonding fibers of one size by needlepunching and (b) bonding fibers of another size by needlepunching and water jets, rather than "a least one of" the two fiber types being present. With respect to the 112, 1st rejection of the limitation "portions," said limitation is not supported because applicant's assertion that employing different bonding processes "necessarily results in a tufted backing having different portions" is unfounded. For example, bonding the entire surface of a nonwoven by needling and water jets does not necessarily provide for different regional portions (e.g., border vs. center), as is encompassed by the present claim language.



CHERYL A. JUSKA  
PRIMARY EXAMINER